Supreme Court, U.S.
FILED
OCT 2 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-96

IN THE SUPREME COURT
OF THE UNITED STATES

RICHARD AIELLO and
JOHN T. MACAUDA,
Petitioner,

V.

COMMONWEALTH OF MASSACHUSETTS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL
COURT OF MASSACHUSETTS

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Due Process Clause of the Fifth and Fourteenth Amendment requires that indictments be returned by an unbiased Grand Jury when a state resorts to a Grand Jury proceeding?

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IN OPPOSITION

Respondent does not object to petitioner's citation to opinion below or claim of jurisdiction.

STATEMENT OF THE CASE

Petitioners, both police officers, were charged by indictment with

murder in the first degree, assault and battery by means of a dangerous weapon, assault by means of a dangerous weapon with intent to murder while armed and violations of civil rights.[1/]

Prior to trial, petitioners moved to dismiss the indictments or for appropriate relief and for a change of venue. After argument, the trial judge denied the motion to dismiss but granted their motion for a transfer of venue. After trial by jury, petitioner Aiello was found guilty of murder in the second degree, assault and battery by means of a dangerous weapon and violations of constitutional rights. Petitioner Macauda was found guilty of

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1/ Three other police officers, not parties to the instant petition, were also charged with offenses arising from the same incident.

manslaughter, assault and battery by means of a dangerous weapon and violations of constitutional rights. The Supreme Judicial Court affirmed. Commonwealth v. McLeod, 394 Mass. 727 (1985).

REASONS FOR NOT GRANTING THE WRIT.

I. The Petition Does Not Raise A Constitutional Claim.

Unlike the Sixth Amendment right to an impartial petit jury, (applicable to the states under the Fourteenth Amendment, Duncan v. Louisiana, 391 U.S. 145 (1968); there is no constitutional right to a grand jury in a state prosecution. Hurtado v. California, 110 U.S. 516 (1884). The only constitutional constraints placed upon a state grand jury are those imposed by the Equal Protection Clause of the Fourteenth Amendment. See, Strauder v.

West Virginia, 100 U.S. 303 (1880); Hernandez v. Texas, 347 U.S. 475 (1954). Petitioners herein make no claim involving an alleged denial of equal protection. They claim merely that the grand jurors were hostile and biased. Petitioners cite no authority for the proposition that the Due Process Clause requires that the state furnish an unbiased body when it utilizes a grand jury proceeding and, indeed, this Court has refused to "remotely intimate any view" on whether the federal requirement of an unprejudiced grand jury is applicable to the state. Beck v. Washington, 369 U.S. 541, 546 (1961).

II. Massachusetts State Law Adequately Protects The Integrity Of The Grand Jury Process.

As the Supreme Judicial Court noted, Massachusetts has acted to protect the

integrity of the grand jury process. The grand juror's oath is set forth in G.L. c. 277, §5 which directs that "...you shall present no man for envy, hatred or malice,..." The court found that petitioners had made no showing of such egregious bias or prejudice. Commonwealth v. McLeod, supra at 734-735.

Finally, respondents submit that petitioners have failed to allege any conflict between the decision of the court below and any decision of this or any other court on the alleged constitutional issue they seek to present. See, Rule 17, Supreme Court Rules (1980).

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.